I must rule that this defendant has no case to answer on either of the two charges and I discharge him accordingly.

Sentence (first and third defendants only)

The distribution of forged currency, even though it may not be of a very high standard, is necessarily a serious matter. This can be seen from the maximum sentences of 15 years' imprisonment under s 489(B) of the Penal Code, and seven years' imprisonment under s 489(C) of the Penal Code.

D1, who was not represented, pleaded guilty to a charge of receiving $3,900 in forged $100 Brunei notes, contrary to s 489(B). The prosecutor offered no further evidence on an offence, contrary to s 489(C), with which D1 was also charged.

According to the facts, which were put forward on behalf of the public prosecutor, D1 was arrested on the evening of 14 May, at which time he was a passenger in a car, driven by a police officer in plainclothes, with a police informer as the other passenger. When arrested, the defendant was in possession of the forged Brunei notes alleged in the charge.

According to him, he did not know what he was to receive for distributing the notes. However, it seems to me that he must have known this, since he knew, when he received them, that these notes were forged ones.

I give proper credit to the defendant for the fact that he has no previous convictions; that he was only 23 at the time of the offence; that he has been of assistance to the police and pleaded guilty from the outset; and that he has expressed considerable remorse. I note that he had been in Brunei for about four years, at the time of this offence, with apparently no proper work permit, although he had been working as a labourer at $35 a day.

In spite of the lesser part, which this defendant has played, it is necessary to remember the seriousness of the offence to which he has pleaded guilty, and of the fact that the dissemination of forged currency is unlikely to be effective, unless assisted by persons, like the defendant, who are willing to distribute the notes. Because I think that the part which he played is a lesser one, compared with that of D3, I consider that a sentence of two and a half years' imprisonment is appropriate. This should run from the date of his arrest.

I must view the conduct of D3 in a more serious light, although he is a man with no previous convictions, aged about 35 at the time of the offence.

Like D1, he is a citizen of Malaysia. He has been in Brunei since 1980. He also assisted the police, pointing out where the sack of forged currency was to be found near his house, when they arrived on the evening of 15 May. He immediately made a statement to the police, in which he disclosed the extent of his involvement in these offences and pleaded guilty at the earliest opportunity. He has shown a genuine remorse for the offences charged against him.

According to D3, it was his task to arrange for the exchange of the forged notes with genuine ones, for which he would receive twenty cents in the dollar. He was first approached in Sabah, Malaysia, by a man called Jamiah in March of this year, and had brought back with him, to Brunei Darussalam, a very substantial quantity of forged currency notes, which were found in his possession on 15 May. He fully admitted that the attempt to get rid of the $3,900 was the first transaction involving forged currency in which he had been involved. It would appear that no other notes, except those in the possession of the defendants, have so far been discovered. Thus, if D3 is to be believed, the forgery of the Brunei notes took place in Sabah and not in Brunei Darussalam itself.

D3 was found in possession of $52,640 in $100 and $10 Brunei currency notes, and can, perhaps, be said to have been fortunate in being charged only under s 489(C) of the Penal Code. Even making due allowance for the various factors which I have mentioned, I cannot overlook the fact that this defendant was in possession of a very large amount of forged currency, which he had brought into Brunei from abroad with the object of profiting from this. It is essential that the Brunei currency shall be protected, and a proper sentence, in my view, for this serious offence, is one of four and a half years' imprisonment, to run from the date on which he was arrested, in 1988.

Order accordingly.

Solicitors: *Clidero & Lee*; *Yu & Co.*

Reported by *Ng Sheau Jiuan*

Yau Kong Kui v Public Prosecutor

HIGH COURT (BANDAR SERI BEGAWAN) – CRIMINAL APPEAL NO 9 OF 1988
ROBERTS CJ
5 JANUARY 1989

Criminal Procedure – Sentencing – Custodial sentence of six months' imprisonment for offence of dangerous driving causing death – Whether manifestly excessive – Deterrent nature of sentence – Factors to be borne in mind when imposing custodial sentence – Delay of six months between date of defendant's appearance in Magistrate's Court and date of sentencing – Road Traffic Act (Cap 68), s 27(1)

Words and Phrases – 'Deterrent sentence'

The defendant was charged with dangerous driving causing death, contrary to s 27(1) of the Road Traffic Act (Cap 68). He

was convicted and sentenced to six months' imprisonment. His driving licence was endorsed and a disqualification from driving for two years was also imposed. The defendant appealed against his sentence, contending that there was an absence of custodial sentences in Brunei in cases of a similar nature. Counsel argued that in all those cases, only a fine had been imposed and the period of disqualification had not exceeded 12 months in any of them.

Held, allowing the appeal in part:

(1) The magistrate concluded his remarks by saying 'a deterrent sentence must be imposed'. As to the word 'deterrent', it means that a sentence, which is higher than that which would normally be proper for the offence concerned, is to be imposed on the defendant, not necessarily because of the facts of his case but in order that others should be dissuaded in future from committing offences of a similar kind. This must necessarily involve a degree of unfairness to the defendant concerned, since he is receiving a sentence which might be less if he were to be sentenced on his own merits alone. Such a course, however, is not necessarily incorrect as the sentences imposed before may have been too low.

(2) One of the factors which a court should bear in mind when deciding whether a custodial sentence should be imposed for offences of causing death by reckless driving is the speed at which the defendant was driving at the time of the accident. In this instance, it is beyond doubt that the defendant was driving at a speed which was grossly excessive in the circumstances.

(3) Among the factors which can amount to a mitigation of the offence are a plea of guilty and a show of genuine remorse. From the record, neither of these have occurred.

(4) It is within the discretion of the magistrate to suspend a sentence of imprisonment if he wishes to do so but this power should be exercised with care. A magistrate should not suspend a sentence of imprisonment save in unusual circumstances, for example, if there is a substantial point of law involved and the defendant has a good chance of success on appeal.

(5) The court is disposed to interfere with the sentence for two reasons. Firstly, because this is a sentence of a deterrent nature in the sense that no similar sentence has been imposed in the past. Secondly, because of the long gap of 16 months between the appearance of the defendant in the Magistrate's Court on 20 July 1987 and the sentence which was imposed by him on 14 November 1988. While the court is left in no doubt that some custodial sentence is necessary, the sentence of six months can properly be reduced to one of two months. The other sentences imposed by the magistrate will stand.

Case referred to

1 *R* v *Boswell* [1984] 3 All ER 353 (folld)

Legislation referred to

Road Traffic Act (Cap 68) s 27(1)

ACW Abrahams for the defendant.
Ivan Leong (Deputy Public Prosecutor) for the State.

Cur Adv Vult

Roberts CJ: The defendant, Yau Kong Kui, was charged with dangerous driving causing death, contrary to s 27(1) of the Road Traffic Act (Cap 68). The offence, to which he pleaded not guilty and of which he was later convicted, took place on 2 February 1987. Although he first appeared, in front of a magistrate, on 20 July 1987, it was only on 14 November 1988, 16 months later, that the magistrate imposed a sentence of imprisonment. It is against that sentence that the appeal is primarily directed, though there is also a subsidiary appeal against the length of disqualification, which was for two years.

Facts of case

The circumstances which lay behind the killing by the defendant of Mrs Woodford are tragic and there is no doubt that much of the blame for what happened lies elsewhere and not upon the defendant.

Earlier on the evening of 2 February 1987, a driver and foreman of the Public Works Department had left a roller on the road which leads from Jalan Tunku Baru to Bandar Seri Begawan. The roller was standing a few yards on the Tunku side of an excavation, which had been made by the Public Works Department on the road. After dark, the roller was unlit, although the driver of it insisted that he had placed a number of cones on the road when he left the roller.

It is accepted, however, that at about 7.45 pm when Mrs Woodford, who was driving a car, hit the roller, only two cones were left and there were no lights. Thus the warning which she had of the presence of the roller on the road was limited. As a result of her collision with the roller, she sustained an injury over the eye and her husband, a passenger in the car driven by her, suffered a broken leg.

Not long afterwards, the police arrived and Sgt Hj Tusin began to take the appropriate measurements. Mr Woodford was sent to hospital in an ambulance. Mrs Woodford, unfortunately, stood behind the car. It was at that point that the defendant, driving his brother's car which he had borrowed, at a speed, according to him, of between 70 and 80 miles an hour, struck first Mrs Woodford, and then her car, which was well into the middle of the road after she had hit the roller. Mrs Woodford died, probably at once, as a result of the collision between the defendant's car and her.

The defendant was convicted by a magistrate of dangerous driving causing death and was sentenced to six months' imprisonment. His licence was endorsed and a disqualification from driving for two years imposed.

The defendant originally appealed against both his conviction and his sentence. He has abandoned his appeal against conviction, in my view, entirely rightly, since it was clear from the evidence that the magistrate could properly convict the defendant of the charge which was brought against him. He has, however, through Mr Abrahams, advanced a number of factors in mitigation of the sentences which were imposed.

Similar cases

The magistrate, when passing his sentence, took into account the defendant's age, his previous record and the absence of any aggravating circumstances other than the driving by the defendant at an excessive speed. However, he concluded his remarks on the subject of sentence by saying that there had been an increasing number of serious accidents resulting in death and severe injuries of the State over the last few years. This may very well be so, but there does not appear to be any evidence of this. It would be helpful to magistrates, as indeed it would to this court, if, on some future occasion, the police, or the prosecuting officer, were to present to the magistrate some statistics which show the number of road accidents which have taken place in recent times.

Deterrent sentences

One of the stronger arguments advanced on behalf of the defendant has been the absence of custodial sentences in Brunei in cases of a similar nature. In all those which have been uncovered by the diligence of counsel, only a fine has been imposed and apparently the period of disqualification has not exceeded 12 months in any of them.

The magistrate concludes his remarks by saying 'a deterrent sentence must be imposed'. As I understand the word 'deterrent', it means that a sentence, which is higher than that which would normally be proper for the offence concerned, is to be imposed on the defendant, not necessarily because of the facts of his case but in order that others should be dissuaded in the future from committing offences of a similar kind. This must necessarily involve a degree of unfairness to the defendant concerned, since he, in such an event, is receiving a sentence which might be less if he were to be sentenced on his own merits alone. This is what apparently happened to the defendant in this case.

However, such a course is not necessarily incorrect. The sentences imposed before may have been too low. And, in addition, the time may well have come for the imposition of a sentence of the kind I have described.

Before I can interfere with the sentence that was passed upon the defendant, in any event, I have to be satisfied that, in the circumstances, it was manifestly excessive.

The Court of Appeal, Criminal Division, England, in 1984, considered in *R* v *Boswell,*[1] the circumstances which a court should bear in mind when deciding whether a custodial sentence should be imposed, if there has been a conviction for the offence of causing death by reckless driving, which appears to be much the same as dangerous driving causing death, contrary to s 27(1) of the Road Traffic Act of Brunei Darussalam.

One of the factors, and it is by no means the only one, which a court should take into account is the speed at which the defendant was driving at the time of the accident which caused death. In this instance, it is beyond doubt that, even on his own evidence, the defendant was driving at a speed which was grossly excessive in the circumstances. Nor can it be said that his blameworthiness was substantially reduced by his attempt, at the last minute, to brake.

I am satisfied that there are some circumstances in which an excessive speed, by itself, is sufficient, if it leads to death, to support a sentence of imprisonment for dangerous driving causing death under s 27(1).

Among the factors which are mentioned in *R* v *Boswell*[1] as amounting to a mitigation of the offence, a number were taken into account by the magistrate. However, included in these are a plea of guilty and a show of genuine remorse, neither of which, from the record, seems to have occurred.

Suspension of sentence

It is, of course, within the discretion of the magistrate to suspend a sentence of imprisonment if he wishes to do so, but this is a power which should be exercised with care. The days when no judge was available in Brunei Darussalam to hear an appeal for some months are gone; and a magistrate should not suspend a sentence of imprisonment, save in unusual circumstances, for example, if, in his view, there is a substantial point of law involved and the defendant has a good chance of success on appeal.

Delay

I am much influenced, however, by the fact that the defendant has had this charge hanging over him since 2 February 1987, that is, for over 21 months before sentence by a magistrate. This is a length of time which is, on the face of it, difficult to excuse for an offence of this nature. I feel obliged to give considerable weight to this factor in deciding whether the sentence imposed was excessive.

There is alas, nothing on the record to show that any sense of urgency was present and I cannot absolve defence counsel (who did not appear on the appeal) from this comment.

The facts were described by the magistrate 'as amounting to a bad case of dangerous driving'. With this I cannot disagree. Nor can I say that a sentence of imprisonment was manifestly excessive. There are many cases, on the authority of *Boswell,*[1] in which a custodial sentence is proper for an offence of this kind.

I am, however, disposed to interfere with the sentence for two reasons.

Firstly, because this is a sentence of a deterrent nature, in the sense that no similar sentence has been imposed in the past, though I think it should be the normal punishment for driving of this kind.

Secondly, because of the long gap of 16 months between the appearance of the defendant in the Magistrate's Court and the sentence which was imposed by him.

I cannot disagree with the magistrate that an immediate custodial sentence of imprisonment is a correct one, nor with his endorsement of the licence, nor with his disqualification of the defendant from driving for two years.

Because of the factors which I have mentioned, however, while I am left in no doubt that some custodial sentence is necessary, I consider that the sentence of six months can properly be reduced to one of two months and I order accordingly. The other sentences imposed by the magistrate will stand.

Order accordingly.

Solicitors: *Abrahams Davidson & Co.*

Reported by *Ng Sheau Jiuan*

MALAYSIAN REPORTS

Ghazali bin Mat Noor v Southern Bank Berhad and four other appeals

SUPREME COURT (KUALA LUMPUR) – CIVIL APPEAL NOS 575, 576, 577, 578 AND 579 OF 1987
MOHAMED AZMI, HARUN AND AJAIB SINGH SCJJ
20 MARCH AND 15 APRIL 1989

Bankruptcy – Validity of bankruptcy notice – Bankruptcy notice stating rate of interest payable but which did not quantify interest sums – Bankruptcy Act 1967, s 3(1)

In these cases the bankruptcy notice issued stated the rate of interest payable but did not quantify the interest sums payable. Thus in Civil Appeal No 575 of 1987 the bankruptcy notice demanded payment of 'the sum of $10,459.20 plus interest thereon at the rate of 15.8% per annum on monthly rests from 31 May 1984 to date of realization and $373.00 costs'. The issue raised in the appeals was whether the bankruptcy notices were valid.

Held, allowing the appeals:

(1) For a bankruptcy notice to be valid it should state the exact amount due at the date of the bankruptcy notice. The judgment debtor must know the exact amount he has to pay to avoid bankruptcy. He does not have to make calculations or enquiries.

(2) In the present appeals, as the interest sums payable have not been quantified, the bankruptcy notice in all five cases are invalid ab initio and consequently all subsequent proceedings to these bankruptcy notices are a nullity.

Case referred to

1 *Low Mun* v *Chung Khiaw Bank Ltd* [1988] 1 MLJ 263 (folld)

Appeal from: Bankruptcy Nos 43-48-1986, 43-604-1986, 43-654-1986, 43-776-87 (High Court, Kota Bharu)

C Jegathesan for the appellants in all the five appeals.
Amin bin Mohd Zain for the respondent in CA 575 of 1987.
Zamzuri b Mohd Hussin for the respondents in CA 576 and 577 of 1957.
Yusof bin Haji Mohd Noor for the respondent in CA 578 of 1987.
HS Lim for the respondent in CA 579 of 1987.

Cur Adv Vult

Harun SCJ (delivering the judgment of the court): The issue raised in these appeals is the validity of a bankruptcy notice which, inter alia, states the rate of interest payable but did not quantify it. Thus in Civil Appeal No 575 of 1987, the bankruptcy notice demanded payment of:

> the sum of $10,459.20 plus interest thereon at the rate of 15.8% per annum on monthly rests from 31 May 1984 to date of realization and $373 costs ...

In Civil Appeal No 576 of 1987:

> plus further interest at the rate of 8% per annum as from 16 September 1986 to date of settlement ...